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EDWARD J. HICKEY, JR.
(1912-2000)
OF COUNSEL
NANCY B. STONE

Request granted. A settlement
fairness hearing is set for
October 31, 2012 at 4:30 p.m.
August 23, 2012
Discovery regarding FLSA
overtime claims is stayed
until December 23, 2012.
Trial on those claims is adjourned
sine die. Trial on retaliation
will go forward on November 13
unless the parties settle that
claim as well.

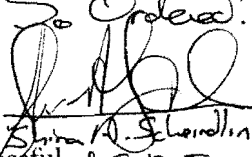
VIA FACSIMILE

Hon. Shira A. Scheindlin
United States District Judge
Southern District of New York
500 Pearl Street - Room 1620
New York, New York 10007

Re: Mullins, et al. v. City of New York, et al., No. 1:04-cv-2979 (SAS)

Dear Judge Scheindlin:

August 21,
2012

So Ordered!

Shira A. Scheindlin
U.S.D.J.

Plaintiffs write on behalf of both parties to inform the Court that after a successful mediation yesterday, the parties' have agreed in principle to the terms of a settlement agreement concerning the plaintiffs' uncompensated Fair Labor Standards Act (FLSA) overtime.

Specifically, the City has agreed to pay the sergeants \$20,000,000.00 in damages, of which \$14,000,000 constitutes back pay and \$6,000,000 liquidated damages. The City has also agreed to pay reasonable attorneys' fees and costs, for which plaintiffs' will provide supporting documentation to the City.¹ We have attached the transcript from the conclusion of the mediation, which sets forth the additional terms and conditions to which the parties have agreed.

The parties are in the process of drafting the written settlement agreement and will attach and incorporate into the agreement the exact amount of damages owed to each plaintiff. We hope to complete the calculations and finalize the settlement agreement by

¹ After the City has had an opportunity to review the contemporaneous billing records, the parties will negotiate the amount of attorneys' fees and costs that the City will agree to pay. If their negotiations are unsuccessful, plaintiffs will thereafter submit an application to the Court seeking their attorneys' fees and costs in connection with their claims for compensation under the FLSA. Pursuant to the settlement agreement, the City agrees that plaintiffs are entitled to recover reasonable attorneys' fees and costs in this case.

The Honorable Shira A. Scheindlin
Page 2 of 2
August 23, 2012

September 14, 2012. As soon as the agreement is completed and has been fully executed by the parties, we will submit it to the Court for approval.

To ensure that this agreement is approved by all of the plaintiffs in this action, the parties respectfully request that your Honor hold a hearing, the purpose of which is to give plaintiffs the opportunity to voice any objections to the agreement, and to inform the Court of their reasons for objecting. Plaintiffs' counsel will be responsible for informing plaintiffs of this hearing, and its date and time, by mailing, by first class mail, the Court-approved settlement agreement and instructions as to the date and time of the hearing. Given the voluminous nature of the mailing, and the need to give the plaintiffs sufficient time to review the Agreement, the parties agree that the hearing should 30-45 days after the written settlement agreement is finalized, which would mean that the hearing would occur some time in late October 2012, on a date that is convenient to the Court.

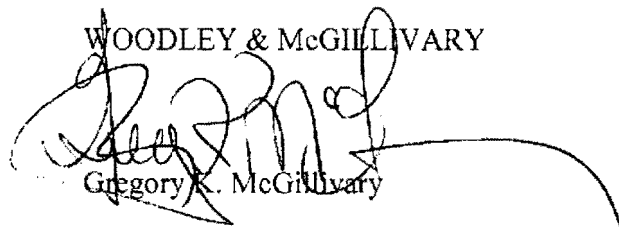
Accordingly, in light of the settlement agreement, the parties respectfully request that the Court issue a 120 day stay of discovery concerning the FLSA overtime pay claims of the lawsuit, and continue the trial on those matters for six months so as to permit the parties time to finalize the settlement agreement, send notice to the plaintiffs and to hold the fairness hearing.

Finally, the parties have not settled the retaliation portion of the lawsuit. We remain engaged in settlement negotiations, however, and we are hopeful that we will be able to resolve these claims without going to trial. In an abundance of caution, we respectfully request that the Court hold open the trial date of November 13, 2012, in the event that remaining claim is not resolved.

Thank you for your consideration of our letter.

Sincerely,

WOODLEY & MCGILLIVARY



Gregory K. McGilivray

Enclosure

cc: Blanche Greenfield (via electronic mail)
Diana Goell Voigt (via electronic mail)
Stephen Younger (via electronic mail)
Andrew Quinn (via electronic mail)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

EDWARDS D. MULLINS, et al.,

Plaintiffs,

v.

04 cv. 2979 (SAS)

CITY OF NEW YORK, et al.,

Defendants.

-----x

August 22, 2012
2:45 p.m.

Before:

HON. ANDREW J. PECK

Magistrate Judge

APPEARANCES

WOODLEY & MCGILLIVARY

Attorneys for Plaintiffs

BY: GREGORY K. MCGILLIVARY

SARA L. FAULMAN

PATTERSON BELKNAP WEBB & TYLER LLP

Attorneys for Plaintiffs

BY: STEPHEN P. YOUNGER

MICHAEL A. CARDOZO

Corporation Counsel of the City of New York

BLANCHE J. GREENFIELD

DIANA GOELL VOIGT

ASHLEY HALE

Assistant Corporation Counsel

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(Case called)

THE COURT: We are on the record in the case of Edward D. Mullins, et al. against the City of New York, et al., 04 Civ. 2979, to record the conditional settlement agreement that the parties have just reached. I will ask Mr. Younger to state the terms of the settlement that the parties have agreed on, and I ask counsel and clients who are here to pay careful attention and stop Mr. Younger with the universal sports time-out signal if he gets anything that needs to be further clarified. And at the end I will be asking counsel, and quite possibly the plaintiffs who are here, to confirm that that is

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 12 the settlement they have reached subject to Judge Scheindlin's
 13 approval.

14 Mr. Younger

15 MR. YOUNGER: Thank you, your Honor.

16 On behalf of the plaintiffs, I am pleased to report
 17 that we have reached an agreement to settle this case, subject
 18 to court approval, on the following terms:

19 The city will pay the plaintiffs a sum total of \$20
 20 million, broken out as \$14 million for back pay and \$6 million
 21 for liquidated damages. That amount will be for overtime pay
 22 earned through the date that the court approves of the
 23 settlement.

24 The city has agreed to supply promptly to the
 25 plaintiffs payroll data through August 31, 2012, and also lien
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 1 data, and we will supply the city, following receipt of that
 2 data, with allocations of the settlement amount among the
 3 various plaintiffs.
 4 The parties will agree on the amount of legal fees,
 5 subject to the plaintiffs providing backup to their legal fees.
 6 The parties have agreed that there will be a 120-day
 7 discovery --

8 THE COURT: Just one second. The parties will
 9 obviously attempt to agree on it. In the event they are unable
 10 to agree on it, I assume that the issue will be submitted first
 11 to me to try to mediate and otherwise to Judge Scheindlin for a
 12 ruling. Is that correct?

13 MR. YOUNGER: Yes. I am optimistic that will not be
 14 necessary.

15 THE COURT: I certainly hope so.
 16 Proceed.

17 MR. YOUNGER: The parties have agreed to a 120-day
 18 discovery stay beginning from today.

19 The parties will advise Judge Scheindlin of the
 20 settlement and request that she set a date for objection by any
 21 plaintiff who may object and the fixing of a fairness hearing.

22 The plaintiffs will give notice to the various
 23 plaintiffs at least 30 days before that hearing.

24 We will also ask Judge Scheindlin to adjourn the trial
 25 of the main case, not including the retaliation claims, for six

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 1 months.

2 The settlement is subject to 90 percent of the
 3 plaintiffs participating in the settlement. Each of the
 4 plaintiffs will need to waive their right to have their
 5 retirement or deferred compensation benefits adjusted by the
 6 amount of the settlement or any other benefits that might be
 7 triggered by the payment. And that's only with regard to the
 8 back pay portion of the settlement.

9 The moneys will be deemed to have been paid to the
 10 plaintiffs in the year that they actually received the moneys.

11 The city will pay the funds within 90 days of court
 12 approval of the settlement.

13 The parties will discuss the mechanics of the
 14 plaintiffs' release.

15 The agreement will specify that there will be no
 16 retaliation against the plaintiffs for their participating in

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 this case, and particularly for their having given testimony in
 this case, and the lawyers will work on language to that
 effect.

A written settlement agreement will be exchanged and
 signed at least 30 days before the hearing before Judge
 Scheindlin.

The retaliation claims of plaintiffs Chioffi and Scott
 are not being settled. The November 13 trial date is being
 held and discovery on those claims will continue.

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Plaintiffs Cioffi and Scott will, however, participate
 to their pro rata share in the back pay and liquidated damage
 settlement.

MS. GREENFIELD: These are the substantive terms of
 the agreement. There are, of course, the mechanisms by which
 the checks will be cut and how they will be disbursed. We are
 not going to be putting that on the record today. We have
 already discussed it, and we don't believe there will be any
 problem reaching an agreement as to those procedural matters.

THE COURT: All right.

MR. YOUNGER: In addition, I think we speak for all
 the counsel in thanking Judge Peck for his efforts in having
 assisted us to reach this settlement.

MS. GREENFIELD: Absolutely.

THE COURT: Mr. Younger, and if you want I will ask
 any of your co-counsel, as counsel of record for the
 plaintiffs, do you agree to the terms, subject to the approval
 process that has been referred to, do you agree to the terms of
 the settlement that has just been described on the record?

MR. MCGILLIVARY: Yes, we do, your Honor.

THE COURT: All right.

MS. Greenfield, on behalf of the city, are you
 authorized to enter into this settlement including by the
 comptroller's office?

MS. GREENFIELD: Yes, we are.

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THE COURT: Do you agree to the terms as you have
 heard Mr. Younger describe them?

MS. GREENFIELD: Yes, your Honor.

THE COURT: All right. Mr. Younger or colleagues, I
 think for those sergeants who are plaintiffs and are here, I
 would like to get their assent on the record at this time. One
 or more of the lawyers know which name goes with which face in
 the audience. Could one of you sort of do the roll call? And
 the question for each plaintiff is, on your own behalf, having
 gotten the advice of your counsel, do you agree to the terms of
 the settlement as you have just heard it described?

MR. YOUNGER: I would ask one of the plaintiffs who is
 involved.

THE COURT: Please give your full name for the
 reporter.

MR. CAPOTOSTO: Paul Capotosto.

Present we have Ed Mullins, myself, Paul Capotosto,
 John Dorst, Anthony Borelli, David Porter, Brian Dennigan, Lee
 Jones, Keith Risorto, and Brian Vaughan.

THE COURT: Let's now do that again and as you call --

MS. GREENFIELD: We can hand up the sheet later on.

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 22 THE COURT: That would help, but before you hand it
 23 up, would you just call them one at a time and ask that person
 24 to stand and state that they agree to the terms of the
 25 settlement.

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1 MR. YOUNGER: Your Honor, maybe if I could just put on
 2 the record that they are the designated steering committee for
 3 the plaintiffs in this matter and also with regard, in
 4 particular, to settlement of the case.
 5 THE COURT: I understand that. Thank you.
 6 MR. CAPOTOSTO: Edward Mullins.
 7 MR. MULLINS: Yes, your Honor. I agree with the
 8 settlement.
 9 MR. CAPOTOSTO: Paul Capotosto. I do agree.
 10 John Dorst.
 11 MR. DORST: I agree, your Honor. Thank you.
 12 MR. CAPOTOSTO: Anthony Borelli.
 13 MR. BORELLI: Yes, I agree.
 14 MR. CAPOTOSTO: David Porter.
 15 MR. PORTER: Yes, sir, I agree.
 16 MR. CAPOTOSTO: Brian Dennigan.
 17 MR. DENNIGAN: I agree, Judge.
 18 MR. CAPOTOSTO: Lee Jones.
 19 MR. JONES: Yes, sir, I agree.
 20 MR. CAPOTOSTO: Keith Risorto.
 21 MR. RISORTO: I agree.
 22 MR. CAPOTOSTO: Brian Vaughan.
 23 MR. VAUGHAN: Yes, I agree.
 24 THE COURT: All right. Very good.
 25 First of all, sergeants, including the rest of the
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1 audience members who are sergeants, I want to thank you for the
 2 service you give to us. Being a police officer or sergeant is
 3 not an easy job, it's a dangerous job, and I appreciate and I
 4 think we all appreciate the work that you all are doing.
 5 I direct counsel to obtain the transcript from the
 6 court reporter, present a copy to Judge Scheindlin with
 7 whatever cover letter you're going to be sending her.
 8 I also ask the court reporter to send a copy of the
 9 transcript to my chambers as soon as counsel orders it.
 10 Let's go off the record a minute.
 11 (Discussion held off the record)
 12 THE COURT: Thank you all for your hard work, and we
 13 are adjourned.
 14 (Adjourned)
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